ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

C.P No. D-2216 of 2025

DATE	**ORDER WITH SIGNATURE OF JUDGE**

Hearing

1. For order on office objection No.1.
2. For hearing of main case.

03.07.2025

Mr. Ayaz Ali Khawaja, Advocate for the Petitioner.
Mr. Haider Saleem, Addl. P.G

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Zulfiqar Ali Sangi J:- The Petitioner namely Nazeer Ahmed son of Muhammad Saleh, has been booked in FIR being Crime No.115/2025 registered at P.S Sujawal, district Sujawal for offence under Section 9 (1) 3 (B) CNS Act 2022. The Petitioner has approached this Court for grant of post arrest bail.

2. As briefly stated the prosecution case as per FIR registered by the complainant SIP Ghulam Hyder Janwary, CIA Sujawal, alongwith his subordinate staff Police Constables Abdul Gani and Rashid Hussain departed from the police station for routine patrolling within the jurisdiction at about 2000 hours, being in police uniforms, armed and using Government vehicle SPE-974. During patrolling, at about 2030 hours, acting on spy information, the Petitioner was apprehended at Garib Nawaz Hotel, and **570 grams** of chars was recovered from his possession. The recovered substance was sealed on the spot and sent to the chemical examiner for analysis.

3. Learned counsel submits that the Petitioner has been falsely implicated in this case and no recovery has been made from the Petitioner; that the only witnesses in the present case were policemen inspite of the fact that the place of incident was thickly populated area; that the alleged recovery of 570 grams of charas is foisted upon the petitioner. Learned counsel lastly submits that in the similar circumstances, the Hon'ble Supreme Court has granted bail to accused from whom 1833 grams of charas was recovered. In support of his arguments he relied upon the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934).

4. Learned Additional Prosecutor General submits that the chemical analysis report confirms the seized substance to be narcotic charas, weighing 570 grams. As per the Table under Section 9(c) of the Control of Narcotic Substances Act, 1997, the quantity falls within the third category, attracting a minimum punishment of five years and a maximum of ten years, along with fine. He further contends that the petitioner was apprehended red-handed by the police, and the case against him stands fully established; hence, he is not entitled to the concession of bail

5. We have heard learned counsel for the parties and have perused the record with their able assistance.

6. On perusal of material available on record, it appears that all the prosecution witnesses are police officials and no independent witness has been cited inspite of the fact that the place of incident was thickly populated area and further the complainant has not recorded the movie or captured the pictures when search, seizure and / or arrest was made as observed by Honourable Supreme Court in the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934). The Hon'ble Supreme Court in the case of Zahid Sarfaraz Gill has observed as under:-

> " 5. We are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires two or more respectable inhabitants of the locality to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force ('ANF') do not record or photograph when search, seizure and / or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws.
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> 6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in built camera. In respect of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and / or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being leveled against ANF/ police that the narcotic substance was foisted upon them for some ulterior motives.

> 7. Those selling narcotic substances make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of their family members. The very fabric of society is damaged. ANF and the Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill. The Prosecution services, paid out of the public exchequer, is also not advising the ANF / police to be do this simple act of making a recording and / or taking photographs as stated above.
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> 8. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. The courts, which too are sustained by the public exchequer, are burdened with having to attend bail applications because the commencement and conclusion of the trial is delayed. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. We expect that all concerned will attend to these matters with the attention that they demand, because the menace of narcotic substances in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes."

7. In view of the above, we are of the view that the petitioner has made out his case for grant of post-arrest bail. Resultantly, this petition is allowed and the petitioner is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 50,000/- (Fifty Thousand only) and PR bond in the like amount to the satisfaction of Nazir of this court. The Petitioner shall appear before the trial on each and every date of hearing.

8. It is clarified that this order is based on a tentative assessment of the material available on record and shall not prejudice or influence the proceedings before the trial court, which shall be conducted and decided strictly on merits.

9. The instant petition stands disposed of in the above terms.

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